

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 10-CR-20403
Hon. Nancy G. Edmunds

v.

D-1 KWAME M. KILPATRICK,
D-2 BOBBY W. FERGUSON, and
D-3 BERNARD N. KILPATRICK,

Defendants.

JURY TRIAL
VOLUME 79

Detroit, Michigan - Tuesday, February 12, 2013

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Detroit, Michigan

Tuesday, February 12, 2013

9:06 a.m.

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THE COURT: Good morning. Again, some of the jurors have switched places just because they're not feeling great and want to be able to use the restroom quickly if they need to.

MR. THOMAS: So, Judge, if they go out screaming it's not because of my argument?

THE COURT: Well, I can't promise that.

(Jury in 9:06 a.m.)

THE COURT: Be seated.

Mr. Thomas.

MR. THOMAS: Your Honor, thank you.

(9:07 a.m.)

MR. THOMAS: Your Honor, brother and sister counsel and loyal audience, a lot of you have been here for a long time and come very often, good morning.

Today is my chance after this long trial to tell you what it is that I think about the evidence in the case. When I talked to you in my opening statement, I was brief, and there was a reason for that. I knew that this case was going to be a long trial and I also wanted to talk to you a little bit about principles and what it is that I thought the case was going to look like when we got done, and so I told you in opening

1 statement that I was going to form my defense through cross
2 examination, and as you've seen, I and the other lawyers that
3 have been at our table on the defense side have done that.

4 It was remarkable that witnesses would come in and
5 testify, and when cross examination was done, it was a, it was
6 an apparently different story, and I guess that that's what
7 cross examination is about. And hopefully you'll understand
8 and agree that in a case as long as this, understanding and
9 collating the facts is a very important thing. And each of you
10 has been paying really, really good attention, and I want to
11 thank you for that on behalf of myself and the other people
12 sitting at my table.

13 As I said then and I'll reiterate now, you're the
14 judges of the facts of the case, and you're the sole judges of
15 the facts of the case. Nobody here has a right to tell you
16 what it is that actually happened. When you go into the room
17 and deliberate, you're all going to discuss your different
18 points of views and hopefully come to a conclusion as to what
19 it was that the government has charged and whether or not they
20 proved their very heavy burden beyond a reasonable doubt.

21 My client wanted me to talk to you about all the
22 good things that he's done in his office, and in a case where
23 you put your case in by cross examination, that's kind of a
24 hard thing to do. We came here in this courtroom with a lot of
25 baggage, and in jury selection, you all were very aware of the

1 media and the publicity about him and the fact that he has, in
2 many senses, been demonized in the media. And our test, yours
3 and mine, are to try and set aside all the things that we've
4 heard, whether they be before, during or after trial, and come
5 to a conclusion based on what the evidence was in this
6 courtroom.

7 You know, I asked questions on cross examination,
8 and the judge is instructing you about questions on our
9 evidence, but when I ask a question of a witness and the
10 witness agrees with me, of course, that is something that you
11 can consider as to whether or not a point is made or whether or
12 not an element is disproved or whether or not you think that
13 the juror -- I'm sorry, the particular witness is telling the
14 truth.

15 Kwame Kilpatrick is a human being. He's charged
16 with charges, very serious charges. He is presumed to be
17 innocent. His wife and children are here in court. He's a
18 father, he's a husband, he's a son, he's a man. And he
19 deserves your consideration, and I, I feel confident that you
20 will do that, but I want to say it on the record, say it for
21 the sake of the people that are here and say it because,
22 because I mean it.

23 We have no burden in this case, and you know that we
24 presented some evidence, and hopefully that evidence has shed
25 some light on some of the allegations in this case and some of

1 the defenses that we've had in this case. The judge is going
2 to instruct you on the credibility of witnesses, and a lot of
3 this case is built on the credibility of some witnesses. You,
4 with your 21-plus years of experience, have seen people who
5 have said things to you that you wondered whether they were
6 true or not. You know what it is that you look for to
7 determine whether or not the person is telling the truth.

8 We have seen witnesses who are argumentative,
9 witnesses that are sometimes pointing fingers and directing
10 you. We've seen witnesses who don't answer the question and
11 try and, you know, spin it sideways and continue to answer
12 questions, and these are the things that you should look for to
13 determine whether or not the person is free and open and is not
14 afraid of the truth or whether or not they're hiding something
15 and whether or not they are, in fact, a truthful person.

16 Now, I'm going to start out with the State Arts
17 Grant. It fit within the government's story line to the extent
18 that it started out in the very beginning, and it just seemed
19 to me that it was a bit of an overkill. The State Arts Grant,
20 as you know, was funded during a time when Governor Engler
21 wanted to get his budget passed, and he was looking for support
22 for his budget, and the way to do that, obviously, was to take
23 money and allocate it to different places throughout the State
24 of Michigan.

25 Kwame Kilpatrick, as the leader, the democratic

1 leader of the house, had the ability to go to his constituents,
2 the different people in his caucus, and say, "What is it that
3 you need to do because we need to get this budget passed." And
4 when I talked to you a little bit about, you know, politics is
5 a little bit like sausage, it's not pretty, and the bargaining
6 that has to take place, the horse trading that takes place, is
7 something that is a fact of life in politics as we know it in
8 America.

9 We heard from Dan DeGrow to that effect, and we
10 understood from Mary Lannoye that that was something also that
11 did occur and that it was proper and appropriate to do.

12 And I'm going to say a lot of bad things about
13 Derrick Miller, but one of the things that Derrick Miller said,
14 and he was there, he was working in the house with
15 Mr. Kilpatrick, he said that it was never intended that
16 Carlita Kilpatrick was going to participate as a contractor for
17 those grants, and that's consistent with what we had heard, and
18 that is that Bishop Edgar Vann was approached after the grant
19 was done. And it was after that that he had a discussion with
20 Carlita Kilpatrick and then she was given a contract to do work
21 at Vanguard.

22 And Derrick Miller also was important to Carlita.
23 He didn't say anything bad about her. In fact, he had some
24 very nice things to say about her and her work at Sherrill. He
25 said that she was highly motivated, well-intended, that she did

1 the work at Sherrill School, that it was a necessary job and
2 that it was helpful, certainly in a community where, you know,
3 kids are at risk and where peer mediation and conflict
4 resolution is necessary.

5 And so I think that, I think that the government's
6 proof in this case is something that you should look really,
7 really carefully at, especially in light of how the evidence
8 unfolded through the witnesses.

9 Yes, Sherrard School did not work out. Yes,
10 Carlita Kilpatrick got paid at least the first half of what it
11 was that she did for the grant. And I thought that when
12 Donna Williams was testifying that there was a little bit of
13 smugness to what it was that she was portraying in that she
14 wanted to downplay how much effort Carlita had made in trying
15 to get this thing on track.

16 She acknowledged the fact that the principal was
17 difficult and that he didn't give her the time. She
18 acknowledged the fact that she was there for eight to ten
19 meetings, but that was different than what she said in the
20 grand jury. And so when I asked her the questions about what
21 it is that she did say in the grand jury, she said she worked
22 from September to December; September, October, November,
23 December. And now I'm going to get in trouble because I'm
24 going to talk to you about math, that's four months, sixteen
25 times that she's gone over there. So she put an honest effort

1 in, and she had meetings. And when she did have those
2 meetings, you can expect that she was prepared because she was
3 highly motivated. She was a person who was concerned about
4 what it was that she had done, and she made the effort.

5 And I talked to you about Donna Williams and how her
6 sister had worked for the unit that's prosecuting
7 Mr. Kilpatrick, and it seemed to me that that might be one of
8 the explanations for her change in testimony in the grand jury,
9 where she now, at trial, was minimizing the amount of time that
10 Carlita had spent there. But I thought it was a slap in the
11 face and I was incensed by it a little bit. I try to keep my
12 emotions, but I was concerned about it.

13 And the reason why was when Carlita said that, you
14 know, she understood that the grant was reinstituted and that
15 she would work for free, Donna Williams, without anything more,
16 said what it was that she thought that Carlita thought, which
17 amounts to mind-reading, and without a crystal ball, I don't
18 know how you do that. But she said that she thought that
19 Carlita was just looking to get more money.

20 When somebody says to you, or comes up to you in
21 good faith, someone who was as well-intended as Mrs. Kilpatrick
22 was, somebody who knew the work, who did the work and was doing
23 it well, when she would offer to say that she would do it for
24 free, and then to have her say, "Well, I knew what she meant,
25 she wanted the money," that just, that just -- that made me

1 wince a little bit. I hope it made you wince, too. That was
2 my take on it.

3 We heard about the State Arts Grant and we heard
4 from Mary Lannoye and we heard about power and responsibility,
5 and certainly there is power and responsibility that is
6 emanating throughout this case. Dan DeGrow talked about the
7 process and how it worked. The government had taken the
8 position that maybe this was somehow improper, but the
9 witnesses from the state said that while it may have raised
10 eyebrows, it may have been an ethical problem, it was not a
11 legal one, and that the Attorney General had taken the position
12 that there wasn't a legal issue and that they never asked for
13 the money back from the grants and, in fact, they funded
14 Vanguard for the second half.

15 So there was no crime here as it relates to the
16 State Grants, and I thought that it was with a little bit of
17 smugness that the government took the position that
18 Carlita Kilpatrick couldn't buy food or clothing or other
19 things with the money that she earned from the grant. If I
20 work for the grant, if I'm a subcontractor for the grant, we've
21 learned from the witnesses of the state that it's expected that
22 you can draw a wage or take a salary. Well, I know that when I
23 get my wages and my salary, I'm not going to want anybody
24 telling me what I can do with it, and I thought that there was
25 a certain amount of smugness in that. And again, that's for

1 you to decide.

2 Now, we're charged here in this case with a
3 racketeering offense, and everybody knows RICO, and when they
4 hear it they say, "Oh, my gosh, what is it?" And of course,
5 you've got the jury instructions now and you'll be able to
6 refer to them as we go on, but my take on it is that the
7 interesting part about a racketeering offense is that it can
8 take otherwise innocent or appropriate conduct -- talking to a
9 friend, making a decision to award a contract to a friend --
10 otherwise innocent conduct, and look beyond that conduct and
11 look to a purpose. And so I guess I could say that if somebody
12 had the specific intention to satisfy all the elements of a
13 racketeering offense that it might be proved, but I'd like you
14 to consider the corollary.

15 In my argument, I'm going to talk to you about other
16 intentions, not intentions to do wrong, but higher intentions,
17 intentions that are not based on the government's allegations,
18 but intentions borne on the cross examination that we've talked
19 about.

20 You know, Bobby Ferguson, he works out there in the
21 cold like this, and he digs in the dirt and he has to pull up
22 sewers that nobody wants to touch and nobody wants to be
23 around. That's hard work. You've heard testimony about the
24 fact that he was good at what he did, that he had equipment,
25 that he had the staff and personnel to do the work. You heard

1 that mostly on cross examination.

2 If you were the mayor of the City of Detroit and you
3 wanted somebody to do something that you knew that you were on
4 the hook for, you'd probably want somebody that you knew could
5 do the work, could do it quickly and do it within the budget.
6 Kwame Kilpatrick, as the special administrator, had that
7 obligation because as a special administrator, when he was
8 appointed right after he became mayor, he had to report not
9 just to his constituents, he had to report to Judge Feikens.

10 In addition to that, we all were sensitized to the
11 issue of a contracting process within the City of Detroit that
12 gave equalization credits to Detroit-based businesses, to
13 Detroit-headquartered businesses and to businesses that had a
14 significant number of Detroit residents. If you were mayor of
15 the City of Detroit, you would want that, and I think that
16 we've made it clear and I'm hoping that you've seen that there
17 is a reason for that.

18 We're living in a city that's essentially a shell.
19 Unemployment is as high as any city in the country, and there's
20 a reason for that. The reason for that is that the businesses
21 that feed people, that give them their wages and salaries, have
22 moved out of the city. And so preferences were established
23 within the City of Detroit, way before Kwame Kilpatrick had
24 become the mayor, and those preferences gave people that
25 headquartered their businesses here, that were based here or

1 that had residents, they would get, they would get a leg up in
2 the bidding process.

3 Now, I talked to you about multiplier effects and
4 all of that, but the simple story is if you've got people
5 working here, they've got to pay taxes here. If you have
6 people that live here, they're going to probably spend their
7 money here. And that generates multiplier after multiplier
8 after multiplier times five for a city that needs money, that
9 needs revenue, that needs jobs, that needs food put on the
10 table.

11 And so when the government shows you that somebody
12 lost a contract because of the fact that, you know, they may
13 have been the low bidder before equalization credits, that
14 ignores that very, very interesting principle. And it was --
15 in my view, it was misleading, because it isn't about who the
16 lowest bidder was. You might be the lowest bidder and not be
17 able to do the job, or you may be the lowest bidder but have a
18 person with an equalization have a preference over you. So
19 there is a higher purpose, then, to awarding a contract. There
20 is a higher purpose than just saving money.

21 I was a swimmer in high school, and I don't want to
22 tell stories, but I want to tell you about this one. One of my
23 best friends in high school was Tom Ryan. Tom Ryan ended up
24 going to college, and we never saw each other really much after
25 that, but then he went to law school and he became a lawyer.

1 And Tom was a prosecutor in Oakland County, you know, and I'm a
2 kid lawyer and he's a kid lawyer, and I'm sitting around the
3 table like they do and they all talk about, "What are you going
4 to do," you know. And I'm sitting there watching people that I
5 know Tom doesn't know get the benefit of a reduced plea in
6 exchange for, in exchange for agreeing not to go to trial.

7 So it was my turn after watching this and I went up
8 to Tom, and I said, "Well, you know, Tom, here's the equities
9 of my case and I think that we can solve this case," and I
10 wanted to solve it along the line with at least two or three
11 other people, what they had done, with basically the same
12 facts. And Tom didn't do it. And I couldn't believe it.
13 Here's a guy that, you know, I toiled with, I sweat with, we
14 led a team together, you know, we were good friends, and I
15 didn't know why.

16 And so I went back to my office and I wrote him a
17 long letter. It wasn't an angry letter, it was just I just
18 needed to have understanding. I think what happened with Tom
19 was that because he knew me, he bent over backwards, and as a
20 result of that, because I was his friend, I suffered.

21 I think a little bit of that is going on in this
22 case. I think a little bit of the government's criticism is
23 along that way. You can't deny your family.
24 Bernard Kilpatrick is here today. We haven't done that. You
25 can't deny your friends. Bobby Ferguson is here. And we have

1 not denied that either. But to the extent that the government
2 wants to say, "Oh, well, we want you to treat Bobby Ferguson
3 differently, okay, because you talk to him or you text him or
4 you have a relationship with him," that doesn't hold water.

5 This case, this case is about eleven contracts, nine
6 of which are DWSD contracts. Do you remember what Darryl
7 Latimer said, how many contracts are let at DWSD per year? 40
8 to 60. And we're talking about, in this whole case, nine
9 contracts, in DWSD to Bobby Ferguson. More. There's two
10 contracts that aren't DWSD contracts. There's hundreds of
11 contracts let with the City of Detroit outside of DWSD.

12 So now I want to talk to you a little bit about
13 climate of fear, and that's another issue that we've been
14 grappling with the whole trial, and I know that you've seen the
15 subject, and the judge has basically taken the position that a
16 person can come in and testify as to what their perception is
17 of what happened and subjectively say that it was because of
18 the fact that they had a fear of economic loss, that there was
19 an extortion that had occurred.

20 Well, one of my observations on that is that the
21 judge has already instructed you about the reasonableness of
22 the fear, and it kind of sticks in my craw a little bit when
23 you got a guy that's worth two and-a-half billion dollars, and
24 he comes in here and he says he had a fear of losing money, one
25 of the biggest contractors in the City of Detroit. I mean,

1 that just, that just -- I -- well, that doesn't make sense to
2 me.

3 All right. Rachmale and Tom Hardiman, they came in
4 and they said, "Well, we lost a contract that we were entitled
5 to." And I don't know if you remember that IMG drawing that I
6 had, and it's one of the exhibits, that IMG drawing shows that
7 the bid, the bid is only one of the very first levels. There
8 is a lot more that has to occur after that. And I don't know
9 if you remember my testimony -- or, I'm sorry, my cross
10 examination, I think it was of Rachmale, where I asked him,
11 "Take a look at this bid document, what does it say?"

12 Says, "The City of Detroit reserves the right -- or,
13 "The Detroit Water and Sewer Department reserves the right to
14 cancel the contract at any time."

15 So I want to take you back to what it was I was
16 telling you about as special administrator or the mayor of the
17 City of Detroit, if you see a contract with somebody that's not
18 qualified, as I suggest Hardiman and Rachmale were in the very
19 early years, and you have somebody else who is already doing
20 the work very close by with equipment, what would you as mayor
21 do in that situation?

22 Now, I'm going to add another equation. What if the
23 rate price was lower for the other person, what would you do?
24 Is that responsible government, is that administering to what
25 it is that you were supposed to administer? Five million,

1 ten million for a contract that they may have planned on, but
2 they had no right to expect until it was actually finished in
3 the contracting process, that very long process that you saw
4 with that line drawing.

5 I've got another equation for you, 8 million,
6 157 million, all right. The letter that they got said, "Thank
7 you for your bid. We're sorry that you're not going to be able
8 to participate. We look forward to you bidding on the next
9 one," and they did. During the administration,
10 Kwame Kilpatrick's administration, they took that company from
11 \$8 million of DWSD business to \$157 million.

12 Fear of economic harm? Those are, those are
13 victims? They come here ten years after the fact and say,
14 "Well, we lost that money, you know, people were out of work."
15 I want you to remember the cross examination. They had a
16 \$12 million add-on to a contract that they were working on that
17 they did for a couple of years after the fact, and when they
18 tell you that they didn't get any business with the City of
19 Detroit after Kwame was in business, cross examination showed
20 otherwise.

21 Now, you can look at Tom Hardiman, you can see how
22 he testifies, you know on cross examination he was pretty
23 difficult, but more than that, was it logical what he said, was
24 it compelling, was he telling us the truth or did he have an ax
25 to grind? The guy made \$157 million.

1 Kwame, we have to take a look at things in the
2 context of what it was that was going on at the time. When
3 Tony Soave sat down with Kwame Kilpatrick, that was in the
4 fourth month of his administration, and I ran through a whole
5 host of things that were going on. Obviously, as you could
6 imagine a new mayor would do, and I'm certain as it was with
7 Dennis Archer and maybe even Coleman Young, that they took a
8 look at all the contracting and said, "Well, okay, what's going
9 on here? Let me do my due diligence. Let me make sure that
10 what is going on is appropriate."

11 And for Tony Soave to come in, you know, apparently
12 he has a lot of largesse, and you know, he could sit down with
13 the City of Detroit and say, "What's going on with these
14 contracts?" And it wasn't entirely a happy meeting because his
15 friend, Charlie Williams, who Mr. Bullotta put up on the board
16 yesterday, who didn't testify in this case, who we suggest is a
17 pass-through -- and I think we all talked about pass-throughs,
18 and that is where you get some guy up there who essentially
19 says that he's a 51 percent owner of a business with no
20 equipment, with no personnel, and then he hires his minority
21 partner, Mr. Soave, to do all the work. So he gets the benefit
22 of the minority contracting process, but then most of the money
23 goes back to the person who lives in the suburbs.

24 When Kwame Kilpatrick says that Charlie Williams
25 wasn't the right person for the job, you have to decide, does a

1 guy with no personnel, with no equipment, with no real
2 experience, he was the head of DWSD, but he's not out there
3 digging holes, is he the best guy for the job? Or, again, is
4 that a reasonable action on the part of a mayor who runs the
5 City of Detroit, first of all, to make sure that the jobs stay
6 in the City of Detroit; secondly, to make sure that the job
7 gets done on time?

8 We talked about the things that Kwame Kilpatrick was
9 doing when Mr. Soave had met and his budget was in serious
10 deficit. He had 48 labor bargaining units that were having
11 contracts that expired within 90 days. The police department
12 had a justice department consent judgment. City services were
13 not working, grass, no street lights, all that. He had more
14 than 60 appointees that he had released and he had to find for
15 directors or deputy directors. He was conducting a national
16 search for a head of Detroit Water and Sewer and also chief of
17 police.

18 That's pretty much, for a little guy -- not so
19 little -- just starting out at 31 as the mayor of the City of
20 Detroit. For him to wait for four months to get to Mr. Soave,
21 while it might not have been what Mr. Soave wanted, probably
22 was the right thing to do.

23 And if you have any question about Mr. Kilpatrick's
24 administration as a special administrator for Detroit Water and
25 Sewer, you've got to see what Judge Feikens said in DJJF-5.

1 That was at the end of Kwame Kilpatrick's tenure as the special
2 administrator for the Detroit Water and Sewer Department.

3 Now, you remember in opening statement when
4 Mr. Chutkow said that Kwame was fired? And I had taken the
5 position that he had not been fired, but that his services were
6 no longer necessary.

7 Mike, can you make it bigger, or no?

8 Here's what the judge said in a document that was
9 filed in federal court, "Two key decisions by Mayor Kilpatrick,
10 acting as a special administrator, was the hiring of Mercado
11 and IMG which has resulted in significant progress towards
12 compliance with the Clean Water Act."

13 When you go through the documents regarding
14 Judge Feikens, you're going to see that there is a history of
15 noncompliance before Kwame Kilpatrick became the mayor. And up
16 until 2000, Judge Feikens had indicated that he wasn't on track
17 with where he wanted, but here we are, six years later, "No
18 permit violations, good progress towards construction of
19 mandatory projects, and financially, Detroit Water and Sewer is
20 in a position to continue compliance."

21 Now, this doesn't sound like somebody getting fired.
22 "Under Kilpatrick's leadership, DWSD is now making steady
23 progress towards long-term compliance and the end of the
24 Court's oversight."

25 Somebody who the judge had questions about, or

1 somebody who the judge lauded and praised for the fact that
2 he'd done such good work between 2002 and 2006?

3 The other thing I want you to read in those
4 documents is that the equitable powers of the special
5 administrator are broad. He can ignore state law, he can
6 ignore litigation, because he's under the auspices of a federal
7 judge who has taken over. He accounts to Judge Feikens, and as
8 such, it's necessary that he please Judge Feikens. Those
9 equitable powers are very, very broad. They grant
10 extraordinary authority to the mayor.

11 And when you consider the government's theory that
12 Kwame had done anything inappropriate, recognize that broad
13 authority. It was approved by a federal judge at every stage.
14 The judge recognized that the Clean Water Act and the consent
15 judgment was served well in that very same opinion and that it
16 came in 10 percent under budget. Does that sound like
17 irresponsible?

18 Water and Sewerage rates are reported to be the
19 lowest in the nation. Take a look at DJJF-5, Page 5, at the
20 bottom, and what you saw up here on the board earlier, it was
21 Page 6.

22 I want to talk to you again about something else,
23 and that is that Mr. Kilpatrick has been criticized about his
24 communication with Bobby Ferguson. And of course, we have the
25 benefit of the text messages, and I say that somewhat tongue in

1 cheek, but there are some text messages that I want to show
2 you. We don't have the benefit of text messages as it relates
3 to people like Tony Soave or people like John Rakolta at
4 Walbridge Aldinger.

5 And, again, like the Tom Ryan story, I want to talk
6 to you a little bit about the difference between politics and
7 contracting. Politically, you would want to talk to your
8 constituents to find out what they think and what they feel and
9 how they're doing and maybe even hear what it is that they have
10 to say on a particular issue. That's responsible government.

11 We don't have the benefit of the text messages with
12 a guy like John Rakolta, who had meetings that we see from
13 Mr. Kilpatrick's calendar with him. We don't have the benefit
14 of the text messages regarding Tony Soave, but you could
15 imagine these two gentlemen, they've got a point of view, and
16 that they would be very free to tell the mayor what it is that
17 they thought on a certain subject and maybe even a subject that
18 related to their business and the way that they practiced.

19 You also saw on his calendar meetings with black
20 contractors. Mr. Kilpatrick didn't just meet with or talk with
21 Bobby Ferguson. He wasn't the only person that was doing
22 business in the City of Detroit, but because of the text
23 messages, we see what it is that we see. Some of it is
24 embarrassing, some of it is probably not well thought out.

25 The government has tremendous power, and we sit in

1 this big courtroom and we can't even fill it up. The
2 government has the ability to listen to the most private of
3 your thoughts, thoughts that or words that you might have
4 thought would never, ever be told. And while the government
5 might argue that, oh, that's their really true feelings, I've
6 had a lot of discussion with those witnesses on the stand about
7 what it means to say, "Cool" or, "I'll talk at you later" or,
8 you know, no response at all.

9 I did the Cyrano de Bergerac thing with you and
10 talked to you about inflection of words, and certainly when we
11 heard Special Agent Beeckman reading words, he would have an
12 emphasis, and that emphasis may not be what it is that's meant.
13 And if you want to, if you want to see a perfect example of it,
14 I don't know if you remember on Saturday Night Live,
15 Rob Schneider, you know, and he could say "Dude" about 50
16 different ways, and each way would be a different way.

17 Well, we don't get the flavor of that with the text
18 messages. You have to decide. But to the extent that you got
19 to connect the dots or fill in the blanks, well, the government
20 would be very happy to have you do that, but I call that
21 speculation. And words alone without any follow-up, without
22 any surveillance, or without any tell about what it is that had
23 occurred afterwards, you have to consider whether or not that
24 is something that satisfies the government's very, very heavy
25 burden.

1 When the government talks about a climate of fear,
2 those of you that are businesspersons, who know
3 businesspersons, have to know that everybody worries about
4 whether or not they're going to make their payroll every week.
5 Maybe not Tony Soave, but everybody, all right. And when you
6 talk about what is the climate of fear that is presented when
7 you lose a contract, recognize that there are seven, eight, ten
8 people that are bidding on those contracts. Every one of them
9 loses, and if the government takes the position that you lost a
10 job because of a climate of fear, you have to look closely at
11 the other six or seven other people that have lost, and it is
12 the same feeling, and it is not necessarily a crime.

13 Now, there was a part in the case where you heard
14 Kim Harris who worked at human resources. He was the gentleman
15 that worked for a person who had passed away, and that was
16 Gerard Grant Phillips. We heard hearsay testimony from Kim
17 Harris that he heard his dead boss, Gerard Grant Phillips, tell
18 him that he should decertify DLZ, and whether he felt
19 uncomfortable about it or not. It's pretty clear that he did
20 not decertify DLZ. There certainly was evidence that DLZ was
21 not a Detroit-headquartered business. There was certainly
22 evidence to the effect that DLZ was not a Detroit-based
23 business, and it was also certain that they didn't satisfy the
24 minority -- I'm sorry, not the minority, but the Detroit
25 residency requirement.

1 But the decertification and Kim Harris' position on
2 this was based on something that he heard from his boss to the
3 effect that Kwame said -- the mayor said to do it. Well, you
4 might attack the weight of that and say, well, okay, the dead
5 supervisor is not here and he's not subject to cross
6 examination and that's not really fair, but the judge did admit
7 it for purposes of saying that as a result of that, that Harris
8 did or did not do what he did.

9 But Harris took the position that there was no
10 decertification process and that you couldn't decertify a
11 company that was already certified. Why is this important?
12 Because they're trying to lay the fact that there was a
13 decertification that was requested and say that there was some
14 ulterior motive or other purpose for it.

15 We know about the contracting process. We know
16 about the fact that people can get a benefit from saying that
17 they are a minority business in some fashion or another. But
18 for Harris to say that there wasn't a decertification process
19 that could be in place for a company that had already been
20 certified, who had lied about the fact that they were either
21 Detroit-headquartered or Detroit-based, I mean, that just
22 didn't hold weight. Because you heard from Sharon McPhail,
23 former Assistant U.S. Attorney, former city councilperson, his
24 boss during the second Kilpatrick administration, she said that
25 there was.

1 And if you look at DHRD-11, Section 2-06, 07 and 08,
2 you'll find that that decertification process is available and
3 it's available in cases where somebody, either through fraud,
4 deceit or misrepresentation or fails to report any changes that
5 materially affect the business qualifications or
6 certifications. So good government, making sure that people
7 don't get what they're not entitled to, or a crime?

8 Now, I have to talk to you a little bit about
9 Amendment 4 to 1368, and this is more on rumors and innuendo
10 and it's more on the contracting process and the climate of
11 fear.

12 You'll recall Kim Parker's [sic] testimony and his
13 testimony to the effect that there was a concern as to whether
14 or not Amendment 4 to the contract 1368 was going to get paid.
15 There was an email between he and a person named Paul Meschino
16 and that that email essentially said that they'd heard rumors
17 that Kwame Kilpatrick was sitting on the contract.

18 Now, here it is. "We are very apprehensive that the
19 parties will settle the matter" -- I'm sorry. This is Paul
20 Meschino, and it's to Tom Chill and others, and it talks about
21 a reversal of the Fourth Amendment to the DWSD. They said it
22 was an \$8 million reversal, but that contract was for
23 \$12 million, as you're going to see, you'll have a chance to
24 take a look at this, and it shows you that they've essentially
25 taken the position that based on rumors and innuendo that the

1 contract is dead and that it's Kwame Kilpatrick's fault.

2 Now, the date of this is important. It's
3 December 19, 2005. I want to show you the Contract 1368,
4 Amendment Number 4, which is Government Exhibit IN-46, and if
5 you can't see it -- Mike, can you zero in on the Victor Mercado
6 signature on 8/12/05, right there?

7 See that? Signed off by Darryl Latimer. This is
8 CS-1368.

9 Can you scroll down just a bit, please. There you
10 go.

11 All right. We had talked about this contracting
12 process and that there were two contracting processes that were
13 in play, one of which takes a contract through city council.
14 It's a much more lengthy process. And then there's another
15 process that goes through the special administrator's office.
16 This one apparently was going to go through city council
17 because, as you see, it's initiated on August the 12th, which
18 is four months before, four months and a week before the
19 letter, and it's a request for \$12 million.

20 Now, as you can see, as it goes and winds its way
21 through the contracting process, you have Darryl Latimer, who
22 you saw testify, Contracts and Grants. You have the signature
23 of the corporation counsel, and you see that the finance
24 department signs off in February of 2006. And city council,
25 this is the one that had the sticker on it that we couldn't see

1 the word, "Council approval," all right, approves it on
2 April 19 of 2006.

3 This document was generated and it operates for the
4 proposition that Kwame Kilpatrick sat on a contract, and you
5 saw emails to that effect. Quite to the contrary, if you look
6 behind IN-46 on Page 4 -- there you go, go back up to 3,
7 please.

8 You will see that despite the rumors and innuendo,
9 and despite the fact that they said that Kwame was sitting on
10 the contract, on -- a special administrative order was entered
11 on December 23rd, 2005. That's within four days of Meschino's
12 email, which Kwame Kilpatrick didn't get. And if you'll
13 remember, the reason why I thought that the December 23rd date
14 was good, was a date that you should look at, was because on
15 December 23rd, it was announced in the newspaper that the vote
16 to recount was publicized as no longer going to happen.

17 Now, we heard Sharon McPhail talk about council and
18 council running for their offices. We've heard about summer
19 recesses. We heard about any number of reasons why it was that
20 council did not address this contract which was IN1-46. We
21 also know that Kwame Kilpatrick, while he was fighting for his
22 political life, was behind in the primary 11 points. He wasn't
23 picked to win the election, and there was a recount after the
24 election. He was never certain that he was going to be the
25 mayor in 2006.

1 But once he is, what does he do? December 23rd of
2 '05, same day as the newspaper reports that Freeman Hendrix is
3 going to be out of luck with his recount, he signs that
4 document. That's four days after Meschino is complaining about
5 it, and it's within the same timeframe that Bernard Parker, III
6 was expressing all of his concern about Kwame sitting on a
7 contract. Kwame Kilpatrick didn't sit on the contract. That
8 contract was signed on December 23rd of '05, from an
9 August 12th processing date. That's four months.

10 Now, we already heard that it takes much, much
11 longer to get through city council, and now you understand why
12 it is that that December 23rd date is very important. Now, a
13 crime or responsible government? You decide.

14 **A JUROR:** I need a break.

15 **THE COURT:** Mr. Thomas, we need to take a quick
16 break.

17 **MR. THOMAS:** Can we do a ten-minute, Judge? I'll
18 try and get my voice back.

19 **THE COURT:** All right. Let's take ten minutes.

20 (Jury out 10:00 a.m.)

21 (Recess taken 10:00 a.m. until 10:13 a.m.)

22 **THE COURT:** Be seated.

23 **MR. THOMAS:** Thank you, Judge.

24 There's one more thing, ladies and gentlemen, I want
25 to talk about on 1368, and then I'm going to let it go, and it

1 goes to the nature of the investigation and how it is that
2 witnesses appear in front of you. And as you can imagine,
3 Bernard Parker, III had been interviewed by agents before, and
4 he was asked questions about his prior interviews.

5 1368, which you see is the contract, was shown to
6 Mr. Parker, and of course, he ran through the emails which led
7 up to his business's disappointment over the fact that the
8 contract had not progressed the way it should have progressed,
9 that it was laid at the feet of Mr. Kilpatrick.

10 I don't know if you remember this, but then I showed
11 him, and it looked like it was for the first time that he saw
12 it, I showed him, that instead of -- at the bottom there,
13 Mike -- April 19, 2006, this going through the city council
14 process. I showed him the special administrative order, which
15 was -- we have already just looked at that -- and that is the
16 date, the 12/23/05.

17 Do you remember, do you remember what his response
18 was? Do you remember? I mean, it was an unusual response. I
19 don't get that many, you know, light bulbs going on over
20 somebody's head, he goes, "Wow." And I asked him the reason,
21 "Well, why did you say 'wow,'" you know? It was the first time
22 that he saw it. You could imagine that he saw the contract,
23 you imagine that he saw the emails. He testified about those.
24 But the fact that he didn't see that Kwame had signed off, you
25 have to ask yourself the question, was there a reason for that?

1 Certainly, the government was aware of the fact that
2 that document existed. Parker wasn't shown that document
3 because it didn't fit in the government's theory, and the
4 government's theory was that he sat on the contract and that he
5 didn't do anything, so that you could believe that
6 Kwame Kilpatrick, in some fashion, wasn't taking his
7 responsibilities as the administrator, special administrator,
8 that Kwame Kilpatrick wasn't being a good mayor.

9 So we heard that "wow." That was kind of an ah-ha
10 moment, and it goes not only just to the fact that it proves my
11 point, but it also goes to another point that I am going to be
12 making as I go on, because when I did my opening statement, I
13 talked to you about challenging the investigation and how an
14 investigation unfolds. We know that agents go out and talk to
15 people. We know that they show them documents, which now
16 brings me to the next part, and that is, the government is
17 relying on three witnesses, in the whole, regarding money
18 issues.

19 And I want to talk about these three particular
20 witnesses, because it's my belief that they are the pillars of
21 the government's prosecution, but these pillars are on a shaky
22 foundation, and those pillars are Emma Bell, Derrick Miller and
23 Karl Kado.

24 These are witnesses who got in trouble on their
25 own -- on their own doing, totally independent of

1 Kwame Kilpatrick, and each one of these witnesses, because they
2 were facing prosecution, had a heavy motivation to implicate
3 Mr. Kilpatrick. And as it relates to these witnesses, there's
4 very little corroboration for what it is that they say.

5 Emma Bell, Derrick Miller, Karl Kado, in my view,
6 are bought and paid for witnesses, and the currency that they
7 are bought and paid for is the hope of freedom and the chance
8 that they can trade their troubles with Mr. Kilpatrick, and
9 they came in here and they said what they said, and I've got a
10 little bit to say about that.

11 Now, these witnesses, in my view, are witnesses who,
12 in the back of their mind, before, during and after, are
13 concerned about, "What's in it for me? What's in it for me now
14 that I'm charged? What is it that I can bargain for so that I
15 can get myself out of trouble?" This is conduct that occurred
16 before the fact that the government came to see them, and it's
17 certainly conduct that has borne out itself in their testimony.

18 Now, the government has a lot of power. I talked to
19 you about this big building, and we talked about the agents. I
20 talked about how sometimes we had as many as seven lawyers. We
21 had untold number of agents that were behind them. This is a
22 prosecution that has started out in 2004 and has been going on
23 now for close to ten years. They have the ability to see
24 witnesses. They have the ability to put people in trouble.
25 They have the ability to make bargains with them when they do

1 get in trouble, and they get to bargain in exchange for what
2 their currency is, and their currency, just as sure as you're
3 sitting here, is the testimony against Kwame Kilpatrick.

4 I told you another thing in opening statement, and I
5 wasn't too proud of it, and that is that I thought that
6 Emma Bell was going to cry, and she did shed what I call a
7 crocodile tear during my cross examination. I think it was a
8 feigned effort for sympathy. I think that Emma Bell is a tough
9 cookie. You decide. Her ten percent fee wasn't the problem.
10 Her working and doing campaign work, that wasn't the problem.
11 Emma Bell's problem was the fact that she hadn't paid income
12 tax in 20 years and that she had an intricate relationship, a
13 process, where she was able to hide from the IRS the money, the
14 large amount of money that she was making.

15 We heard that she was making between 10 percent or
16 15 percent of the money that she was raising, and it's pretty
17 apparent that she was getting paid and getting paid very, very
18 well. But she was a person who was crafty, and I think that
19 that goes to something that you should look at to determine
20 whether or not she is credible or a credible witness. She was
21 able to talk her banker into cashing checks for her and then
22 giving her cashier's checks without any trace to hide that from
23 the IRS.

24 She had 20 years of tax evasion, potential money
25 laundering charges, but she worked out a deal with the

1 government, and that deal was in exchange for her testimony,
2 and that's why I say bought and paid for.

3 Emma Bell was facing significant jail time. She was
4 able to reduce it by her cooperation, and her sentencing
5 guidelines now would allow her to hope for the potential that
6 she doesn't have to serve a day in exchange for what it is that
7 she's done here. That motivation is something that you can
8 look at as well to determine credibility.

9 But I think it's more. I think that you can
10 determine Emma Bell's credibility by other ways. And that is
11 this, there's absolutely no corroboration for what it is that
12 she says when she says she met at a private place with
13 Kwame Kilpatrick and exchanged money with him. It's just her
14 word, not the person that she was with, Angela Burris, not the
15 person that was in the mayor's office that took her to wherever
16 she went. There is no corroboration for it, and the government
17 takes the position, well, maybe there is. Emma Bell had a lot
18 of money, and she said she gave Kwame Kilpatrick a lot of
19 money, and so Kwame Kilpatrick must have got it from Emma Bell.
20 Okay. Donald Trump's got a lot of money.

21 Kwame Kilpatrick was paying cash on his credit
22 cards. We learned from the banker that he didn't think that
23 that was too unusual. He was paying and depositing cash into
24 his bank account. The young man at the bank didn't think that
25 that was unusual, but whether it is or not, this is an instance

1 where the government is trying to have you connect the dots.
2 Because Emma Bell has money and because Kwame had cash, the
3 inference is that he got the money from Emma Bell.

4 But you heard from Special Agent Ron Sauer, and he
5 said that there was no direct correlation between the deposits
6 that Kwame Kilpatrick made and any meetings that he had with
7 Emma Bell. But it's more than that. We know that Emma Bell
8 was a gambler, and we know that Emma Bell had a problem with
9 gambling, and we saw the gambling records that we were able to
10 obtain from Motor City from 2005 through 2008. And those
11 gambling records show that she puts in play in the year 2005
12 \$170,000; 2006, \$569,000; 2007, \$788,950, and 2008, \$803,000.

13 Now, you see that little thing in parenthesis there?
14 That means that's how much money she lost that year. And 2008
15 is an interesting year because Emma Bell said she wasn't
16 working in 2008, she didn't have much income. She only
17 reported, like, \$6,000 and \$20,000. So she lost \$82,000. So
18 you have to ask the question, where did that money come from?
19 Did she give Kwame Kilpatrick half of the money, like she said,
20 or did she keep it under her mattress for a rainy day and take
21 it to the casino?

22 We have significant losses over a period of a short
23 period of time, but I think there's more. When the government
24 showed you Government's Exhibit EB-1, it was a conversation
25 between Emma Bell -- I'm sorry, it was a text message between

1 Kwame Kilpatrick and Christine Beatty. This is on July 29 of
2 2003. Okay.

3 Emma Bell has been fundraising for Mr. Kilpatrick
4 for quite awhile. She's giving him 50 percent of whatever it
5 is that she's making in her fundraising effort. Any check over
6 5,000, she splits 50 percent, according her testimony. And so
7 Kwame would have a vested interest in his relationship with
8 Emma Bell, and yet he doesn't even have her phone number? He
9 asks Chris what her phone number is?

10 More. The second thing that the government showed
11 you was EB-2. That is on July the -- I'm sorry, on August 6th.
12 This is a text message from DeDan Milton and apparently is to
13 Kwame Kilpatrick saying Emma -- I'm not sure who 3776 is --
14 "Emma wants to stop in later at five to ten minutes max, what
15 should I tell her? DeDan Milton."

16 Apparently, a phone call was made, this may or may
17 not have been in relationship to that phone call, but the
18 government had shown you this in closing argument.

19 Well, what they didn't show was EB-3. EB-3,
20 "Emma Bell is here," by Samara.

21 Reply from the mayor, "Tell her to come to Chris'
22 office."

23 Now, this is what the government didn't show you,
24 and why didn't they? Do you remember Emma Bell talking about
25 the fact that she'd come to the mayor's office for a short

1 period of time and that she'd go into the room where the barber
2 chair was and that was a secret meeting room where she'd go
3 into her bra and she'd pull out the money and that
4 Mr. Kilpatrick would put it in his pocket?

5 You've heard testimony where Christine Beatty's
6 office is. It's not next to the mayor's, it's way down the
7 hall on the other side. If Emma Bell is going to be giving a
8 secret delivery of money to Kwame Kilpatrick, let me ask you
9 the question, why is he sending her down to Chris's office,
10 where the barber chair, that insidious barber chair, the
11 demonized barber chair, the barber chair, that terrible machine
12 that is in that room that makes everything look so bad, why
13 isn't he putting her in the room with the barber chair?

14 I'll tell you why. Because she didn't go into the
15 room with the barber chair. This is on August 6, 2002 -- I'm
16 sorry, I said 2002 -- 2003.

17 I'll take the heat on 2002, 2003, but the fact that
18 they didn't show this to you, that's not on me, that's on the
19 government. That's the government in their closing argument
20 trying to show you half of what it is that is out there to be
21 seen, trying to persuade you, sure, Emma Bell called and she
22 wanted five to ten minutes but, you know, leave you to assume
23 or speculate on what it was that had occurred actually as a
24 result of these phone calls.

25 I say if it's on them, you hold it against them. I

1 say that the way that they proceeded in this case in terms of
2 the investigation and this one thing, hold it against them
3 because they have the burden. They have a very heavy burden
4 and they should not be allowed to do that.

5 Emma's gambling records for the years that the
6 casinos kept records substantiate that she put \$2 million in
7 play, and if you want to look at the exhibit, take a look at
8 EB-9. Even assuming that she replays her winnings and we had
9 heard that argument from the government, if you take a look at
10 or about the time that Emma Bell supposedly is sharing her
11 money with Mr. Kilpatrick, take a look at the gambling records,
12 the actual records that show her play. Within, within that day
13 or other days, she's putting a lot of money in play, and that,
14 to me, is a sign of confidence.

15 And this is what my argument is to you. You may
16 take 100, \$200 to the casino and spend 2,000 or \$4,000 because
17 you take your winnings and you replay them, replay them, replay
18 them, but when you get up in the thousands, or the fact that
19 you even go there and put that much money in play is a sign of
20 confidence that you got money somewhere, and the reason why you
21 got that money is because you've had this deal with the bank
22 and they'll cash your checks and you can save them and put them
23 under your mattress.

24 Mike, can we have EB-6A.

25 I want to show you -- this is an exhibit that you

1 have, all right, and this is the Emma Bell -- I think it's 6A,
2 correct? All right. You're not going to be able to do this
3 with me, all right, because it's a long document and the print
4 is very bad. But it's in evidence and I want you to look at
5 it. This is a compilation that was done by Ron Sauer about
6 what it was that Emma Bell did with the money that she
7 supposedly said that she split with Kwame Kilpatrick. Do you
8 remember her testimony? Anything over \$5,000 she split with
9 Kwame.

10 Take a look on April 17 and May the 8th, and see
11 what she did with her money. And since I am not trustworthy
12 with math, I'll trust you with it. I think you'll see on April
13 the 8th that all but \$4,100 is accounted for by cashier's
14 checks that she spends over the month. You'll see, you can
15 track the cashier's check numbers. You'll see that she'll take
16 a cashier's check, hold onto it. She'll cash it. She'll pay
17 her rent with another cashier's check. She'll give herself
18 another cashier's check, and then she'll hold onto it, and then
19 you can actually trace from this document what it is that she
20 did with her money.

21 Those two dates are totally inconsistent with what
22 it is that she says to you, and that is that she split the
23 money with Kwame Kilpatrick. Furthermore, it's direct evidence
24 of how it is that she accumulates money, I say consistent with
25 what it is that we saw with her gambling activity in 2008 when

1 she's got no income.

2 Emma Bell wasn't giving the money to
3 Kwame Kilpatrick. She wasn't the type of person that shared.
4 When she said that she got a \$50,000 bonus on her birthday that
5 Kwame said, "Go ahead, you take it," are you kidding me? Are
6 you kidding me? She didn't give the money up, she kept the
7 money. She had the gambling problem. She was spending it on a
8 daily basis at the casinos.

9 That's Emma Bell. She's the first pillar.

10 And you know, when you want to talk about
11 credibility of witnesses, that woman could cry a tear and then
12 freeze me into a block of ice with a stare. That was one tough
13 cookie. She could gather money from people when they were
14 doing their fundraising, and she could cajole them. She could
15 bully them. She could sweet-talk them, and she could beat 'em
16 up. She could do all of it. She's not a person that is
17 credible.

18 All right. Karl Kado. Karl Kado, I'm going to be
19 really short with you on that.

20 Do we have Cobo 23, Mike? No.

21 So on Cobo 23, I want you to look at that. That is
22 Karl Kado's letter from Mr. Bullotta. "Dear Mr. Kado," in
23 essence, "You're in a lot of trouble. You should get a lawyer.
24 You should have that lawyer come and see me because you're in a
25 lot of trouble. You better contact me by a certain time."

1 So can you see, "Please be advised you're the target
2 of an investigation" -- that means you're in trouble -- "that's
3 being conducted by the FBI and the IRS." Who here wants to
4 hear from those guys? "It may be in your interest to obtain an
5 attorney." He got three. He got three lawyers because he
6 thought that he needed three lawyers because he knew that he
7 was in trouble. And those three lawyers were former Assistant
8 U.S. Attorneys. He told us so.

9 And then Mr. Bullotta, in an olive branch way, says,
10 "This meeting will provide you the opportunity to discuss the
11 possibility of a plea bargain." Now, you tell me, is that
12 conveying a message that maybe, you know, the government wants
13 something from him, not playing it out, not holding their cards
14 close to their chest? "Come on in, we need you to talk." And
15 he did.

16 Over the period of time from 2005 until the time he
17 testified at trial, he made over 50 phone calls to the agents.
18 You think that in any one of those phone calls, he might have
19 gleaned who it was that he was supposed to testify against and
20 what it was he was supposed to say? But I got to ask the
21 question, why 50 times? I mean, I understand two or three or
22 five. Why 50 phone calls? And then why 12 meetings? They
23 already had the hammer, that's the hammer, that letter's the
24 hammer. Okay. Those phone calls, those meetings are meant for
25 nothing else except for to mold the testimony that you heard.

1 And God love him, he's an older guy. He sat there
2 so proper, you know, but he knew what his job was. And he
3 said, "Oh, yes, I gave cash to Kwame Kilpatrick." Couldn't
4 remember that he gave the cash to Kwame Kilpatrick at the time
5 that he was running for election. And of course, maybe that
6 was a lack of memory or maybe it was just him trying to make it
7 worse, because if he didn't give it to him for the election and
8 Derrick Miller didn't take it over to the campaign headquarters
9 like he said, then maybe that might have been a bribe. Okay.
10 But Kwame wasn't even mayor at the time that he was running for
11 office.

12 And then he started talking about other things. I
13 said, well, how do you -- he started to vary a little bit about
14 what it is that he said and he says, "I know that that was true
15 because there was eight inches of snow on the ground." The
16 only problem was, it was in August, and we haven't had eight
17 inches of snow on the ground in Michigan since the ice age, and
18 I know Karl Kado is old but he's not that old.

19 This man is a confused person. This man is giving
20 the government what he thinks that they want. He's already
21 earned his free pass and get out of jail free card. I feel
22 somewhat sorry for him, but I don't feel sorry for the fact
23 that you have to look at the logic of what he says, and he
24 tells you that he knows that he gave Kwame Kilpatrick money
25 because it was eight inches of snow on the ground and it was

1 August? You got to say, maybe he was right when he wrote that
2 letter to the government. You know, the letter that the
3 government didn't show you. I had to show it to you, that he
4 was sinking, that he was not recalling things straight and that
5 he's been suffering from dementia.

6 The second pillar, Karl Kado, not capable of being
7 believed.

8 You saw Derrick Miller. Now, Derrick Miller was a
9 different kind of an animal, and I don't use that in the
10 pejorative term. He was a bright, intelligent guy. He was
11 taking my questions, he was digesting them. He was trying to
12 figure out what it was that he was saying, what it was that I
13 was saying, where I was going, and he wanted to make sure that
14 I didn't catch him in a lie. Well, we caught him in a lot of
15 lies.

16 Derrick Miller was probably the craftiest of all the
17 witnesses that you've seen. Derrick Miller was not coming
18 around. You heard Andre Cunningham say Derrick Miller had gone
19 rogue and that he wasn't showing up at cabinet meetings. We
20 knew that he was -- had transferred out of the CAYMAC Building,
21 and he was not too far from here over in the old Silver
22 Building, and that he was heading up the IT but that he wasn't
23 showing up, and there was a good reason for that.

24 You know, his buddies at Jones Lang LaSalle, they
25 were making a secret side deal with him so that he could get

1 commissions. He was hanging around with Kevin Shumake and the
2 Inheritance Capital Group and looking for a big commission from
3 Shumake. He had aspirations and hopes, and those aspirations
4 and hopes had nothing to do with the job that he was getting
5 paid for, and it had nothing, I submit, to do with
6 Kwame Kilpatrick.

7 The extent to which he went to hide what it was that
8 he was doing was amazing. I don't know whether you heard it.
9 It was amazing. He was capable of getting a lawyer in a large
10 firm to put together documents to be submitted to the grand
11 jury that were not true. He was able to find someone who could
12 sign an affidavit that was false and submit that to the grand
13 jury. He could actually get people to perjure themselves. He
14 was capable of lying to the grand jury, and the government puts
15 him here as if he's got the answer to their question.

16 And I say, you have the right to judge this man's
17 credibility. You have the right to judge what it is that he's
18 done in the past and make a determination as to whether or not
19 you believe him in court. And he was here for a long time and
20 subjected to a lot of cross examination.

21 He set up a shell corporation to funnel money from
22 the General Motors deal to himself, had the person who he had
23 set up at Atrium Financial acknowledge that she was the manager
24 and in order to justify the fact that there was somebody that
25 was going to get the money, not him. That was a \$500,000 deal.

1 He could look you in the eye and lie, just like he's done so
2 many times before.

3 Did you get a sense when I was asking him questions
4 that he might not be completely candid? The judge's
5 instruction talks about credibility of witnesses. It's the way
6 they answer a question that you have to look for. And when I
7 tried to talk to him about his deal and how much time he was
8 facing and the thought process that went on, because I don't
9 know if you'll remember, he had made five separate interviews
10 with the government and told them that he knew nothing about
11 Kwame Kilpatrick. He gave no money to -- I'm sorry, knew
12 nothing about Kwame Kilpatrick taking money, pay to play. He
13 did not involve himself in any of that. He actually, five
14 meetings, sat down and told them that.

15 It wasn't until after he got indicted, another
16 hammer the government has, another arrow in their quiver to
17 mold testimony, that he decided "Oh, well, I'll change my
18 testimony and I'll start talking about Kwame Kilpatrick," but
19 even then he couldn't tell the same story.

20 Derrick Miller is another bought and paid for
21 witness. He's trading his freedom. He wants his freedom, and
22 he's willing to put Kwame Kilpatrick in jail. And when I asked
23 him the question like what was important to him, what were you
24 thinking about? Shame on him. I'd be thinking about my, my
25 family. Shame on him. He was thinking about enlightenment?

1 Hogwash. Hogwash.

2 And when I confront him with the fact that he never
3 went to church, he couldn't stop talking. He implied to you
4 that he's something else, he's not a Christian anymore. Okay.
5 Another effort to try and say, "Look it, I'm telling the truth,
6 I've got no motive to testify, I wasn't really worried about,
7 you know, how much time I was going to get." More hogwash.

8 "I gave Kwame Kilpatrick money." Okay. And we talk
9 about the Andrew Park thing. Are you kidding me? All right.
10 Here I am. I'm the guy that wants to get paid. Okay. So I
11 send somebody to go out and get the money. All right. Why do
12 I do that? Because I don't want to be seen. You go get the
13 money, you work for me, I've got plausible deniability, right?

14 He goes out there to Asian Village, which has
15 cameras, surveillance cameras, and he knows they have
16 surveillance cameras. And he goes and he takes the \$10,000
17 bribe, his bribe, from Andrew Park. Okay?

18 But that's, that's where the story breaks down. He
19 says, "So I called the mayor, I said, come over to the
20 restaurant," you know, the same restaurant that supposedly
21 Kwame Kilpatrick would probably be afraid to go to, if he was
22 really getting money, and the same restaurant that has the
23 video cameras, so that he can go get the money that he sent
24 Derrick Miller to go get? Come on. Are you kidding me?

25 He paused and hesitated when I was asking him

1 questions. He should have paused a little bit longer with that
2 one. It doesn't make sense, it doesn't hold water, it didn't
3 happen. He's the guy that can set other people up to take the
4 fall. He did it with the grand jury, he did it with the
5 lawyer, he did it with the person that was running his
6 business, and he's trying to do it with Kwame Kilpatrick.

7 That's the third pillar of their case.

8 Credibility. And I don't know why -- Mr. Bullotta
9 had mentioned Jon Rutherford. You know, I -- Jon Rutherford
10 was an interesting witness. He actually testified that, "Yes,
11 I gave money. I contributed money." They got him to testify
12 about the \$34,000, and he was nodding his head like it had
13 happened, just like he had Derrick Miller about the \$34,000.
14 Well, we know that that's not true. The government's conceded
15 that. Government's conceded that their witnesses who were
16 under oath and telling you that they gave \$34,000 to a fund
17 that was controlled by Kwame Kilpatrick, that's not true, even
18 though they swore to it.

19 But Rutherford says that there are reasons why
20 people fund political people, a person like him. And he talked
21 about ideals. He talked about philosophy. He talked about
22 friendship. And he did, he gave a lot of money. But if you
23 want to talk about whether or not Rutherford was engaged in any
24 pay to play, he said no. Rutherford said that he didn't get
25 anything and he didn't expect anything. Yes, he gave

1 Kwame Kilpatrick, he says, 2,500 or \$5,000. He bought suits.

2 I asked him, "Did you do that with any expectation
3 of force or coercion or remuneration?"

4 And he said, "No."

5 Where's the crime?

6 Oh, and when the government says to you that they
7 don't have any evidence of gifting, that sounds like a gift to
8 me.

9 He had a plan. He had big plans that he wanted to
10 at some point in time get engaged in a casino, but there's only
11 three casinos in Detroit. None of them were up for sale. The
12 three casinos when Kwame came into office that were in
13 existence had decided to stay pretty close to where they were.
14 Two of them stayed where they were. One of them actually moved
15 about a couple hundred yards away. Those licenses are not
16 easily granted. You know that the vote for casinos was voted
17 down so many times before Archer. He had no chance of getting
18 a casino license.

19 When the government shows you text messages about
20 2001 and 2002, and they show you a newspaper clip where
21 Mr. Kilpatrick says that when he's running for election that he
22 doesn't want casinos on the riverfront, and then there's some
23 discussion in 2004 or '5 regarding something going on at Cobo
24 Hall, an expansion at Cobo Hall, that's a different thing.
25 Which, by the way, that too never got off the ground.

1 But I think that in terms of the government showing
2 the text messages, I think that they played it a little bit
3 fast and loose. I think that that's something that you can
4 hold against them and should.

5 All right. I want to move to a different area, and
6 I want to talk about mail fraud and wire fraud, and I want to
7 talk about running for mayor, the Civic Fund, polling and focus
8 groups.

9 And I'm not going to show you the exhibits that I
10 had showed you before. They're available and they're obviously
11 for your review, and in order to do this, I think that you
12 should look at not only the checks, but you should also look at
13 some of the materials that were generated as a result of the
14 payments for focus groups and polling.

15 Kwame Kilpatrick didn't decide to run for mayor
16 until May of 2001. Prior to that time, the Civic Fund was
17 engaged in making payments for certain things that might have
18 had a purpose relating to a political purpose, but it was not
19 prohibited pursuant to 501(c)(4). And if you don't remember, I
20 can't tell you, we had ten witnesses or so that I had to talk
21 to them about what is a 501(c)(4) corporation. It is a, you
22 know, social welfare organization.

23 Mr. Leeman, who came in, had talked about the broad
24 purpose of a social welfare organization, and how it is not
25 prohibited for a 501(c)(4) corporation to engage in political

1 issues, noncandidate-specific issues, lobbying, education
2 regarding legislative issues, all the things that you see in
3 the Articles of Incorporation that were originally formed, and
4 the Articles of Incorporation that were restated back on July
5 26 of 2001.

6 You have the bills from William Phillips. You can
7 see the activity of the board of directors from those bills. I
8 encourage you to look at those bills for a couple reasons, for
9 the activity that occurred in or about May of 2001, what
10 occurred in July of 2001 when the articles were restated and
11 again on August 26th when that news splash happened regarding
12 Jon Rutherford and his real estate business.

13 The reason why the one on the 26th of August is
14 important is because I think you'll see in the bills that there
15 are meetings and in those meetings this is relating, obviously,
16 to a Civic Fund purpose, and you can see that Mr. Berg is
17 present at a six-hour meeting. We heard Mr. Berg testify that
18 he thought that he was working for the campaign, but this is
19 obviously on a Civic Fund issue, and it's reimbursed by the
20 Civic Fund.

21 Now, why is this important? As it was with the
22 Cadillac Escalade, as it was with the apportionment of the
23 bills for the polling at Lake Snell, as it was for this, for
24 Mr. Rutherford's issue with the Civic Fund, Gary Leeman said
25 that you can apportion certain expenses. Now, that

1 apportionment is obviously something that was considered by the
2 board. And we know that shortly before this, Kwame Kilpatrick
3 had resigned from the board of directors and that the Civic
4 Fund was run by Christine Beatty, Derrick Miller and others as
5 time went on; April Edgar, only until February of 2008.

6 When they want to ascribe criminal culpability to
7 Kwame Kilpatrick and they want to say that Kwame Kilpatrick
8 used the Civic Fund for his own personal purposes, I want you
9 to consider something. Between 2002 and 2008, the government
10 is concerned about \$13,000, a little more than \$13,000 worth of
11 expenditures that were in question for that period of time,
12 2002 through 2007. Okay. And if we take a look at this graph,
13 and this is just for argument purposes only, you can see on the
14 left column that the donor contributions to the Civic Fund were
15 \$1,725,618.24.

16 If you take a look on the right side, and this is
17 between the years between 2002, 2003 and 2007, which are the
18 period in question, you see \$13,953.

19 All right. Can we now move over to the pie chart?

20 These were alleged personal expenses, and this is
21 the proportion of it, .79 percent, for a person who didn't take
22 a salary, who, according to Emma Bell, worked extremely hard
23 but was not engaged in the receipt or the acceptance of money,
24 but he made his presence known because he was the figurehead,
25 and it was as a result of him being the figurehead, million

1 seven twenty-five.

2 Going into 2008, things were happening to
3 Mr. Kilpatrick. As you know, the text message scandal hit. As
4 a result of the text message scandal, he was prosecuted. As a
5 result of that, he ultimately had to resign his position, and
6 he went to jail. And before he went to jail, William Phillips
7 met with the board. They had an interview with Kwame, and he
8 was giving them a status and an update on what it was that was
9 going on in his life at the Manoogian Mansion at the dining
10 room table.

11 And after he left, there was a vote of the board,
12 and that vote of the board was that they would pay for some of
13 his housing while he was out of a home, now the Manoogian
14 Mansion he had to leave, that they would pay for his moving
15 expenses, a certain portion of which were reimbursed, and that
16 they would pay for other things because of the fact that he had
17 no money, he had no income. He and his wife were out of a
18 home, and he was going to be going to jail and face the
19 prospect of being away for about between 99 and 120 days.

20 April Edgar had testified about her experience and
21 what it was that she thought from the time that was February
22 on, but that testimony is measured a little bit because you
23 heard from Erik Rayford, and Erik Rayford was there at that
24 meeting. Kwame didn't tell anybody to do anything. The board
25 had decided that they would give him something because he was

1 in need and because he was without any income.

2 Now, the Civic Fund was in effect from 1999 until
3 2008. At that point, he hadn't taken a salary for all those
4 years for any of the work that he had done, and if the board
5 action was taken and they had independently considered that
6 they were doing the right thing, why is Kwame Kilpatrick here?

7 You know, we heard about the La Costa Resort. You
8 know that the image of the City of Detroit is an important
9 thing. The government made a big deal out of an \$8,000 trip to
10 La Costa, when between 2003 and 2008, they had gathered over
11 \$2 million. So he takes a trip to La Costa. He is the mayor,
12 the face of the City of Detroit. His wife is the first lady.
13 His children went with him.

14 Now, I asked Carol Paszkiewicz why it is that you
15 testified on a contract, 2012 here under oath, that
16 Kwame Kilpatrick had signed CM-2012, and of course, that was
17 important so that they could show that Kwame had some input and
18 engagement in manipulating the contract. And when I asked her
19 on cross examination that day, you know, "Are you sure that he
20 signed it?"

21 She says, "Yes."

22 I said, "Do you have a copy of it?"

23 She says, "I didn't bring it with me."

24 You know, on the next day, on the next day, we
25 showed her the contract. This is Exhibit DLZ-20 -- DDLZ-20.

1 There's no signature on there from Kwame Kilpatrick.
2 Victor Mercado's signature is there but not Kwame's. All
3 right. Okay.

4 Willful, intentional perjury? Certainly,
5 Ms. Paszkiewicz is an advocate for the prosecutor's office. Or
6 a mistake? Okay. And if it's a mistake, then why are we
7 holding the board of the Civic Fund to a higher standard?

8 We heard from Special Agent Ron Sauer, who at one
9 time told us he had no expertise in 501(c)(4)'s, and of course
10 that was in my first cross examination and apparently he had
11 gotten educated between the time that I first had him talk to
12 me and a month later. He juxtaposed his opinion and his view
13 on what it was that was appropriate expenditures and whether or
14 not allocation is a proper thing for us to do when you are, you
15 know, when you're considering whether or not something is
16 properly reimbursable by a corporation.

17 We had Gary Leeman, sweet guy, got sick, couldn't
18 come back. He's better now. But we had Gary Leeman, who was
19 eminently qualified to talk about 501(c)(4) corporations. The
20 government brought Carl Selz, who I call Mr. Carl Selz. He's
21 not a CPA; he's a revenue agent. He's not a special agent.
22 Carl Selz has sat through this entire trial, and his sole
23 purpose was to come in as a, quote, independent expert to
24 determine what was an appropriate expenditure for purposes of
25 Kilpatrick Civic Fund.

1 Well, first of all, Carl Selz has only testified in
2 two cases. Gary Leeman has testified in 150. Gary Leeman
3 talked to lawyers about 501(c)(4) corporations. I think that
4 maybe Selz might have taken a class, but he came in to offer
5 the, quote, independent opinion about what it is that Ron Sauer
6 had said, or maybe what he couldn't say.

7 But he wasn't independent because he didn't offer
8 anything different. He wasn't independent even though he was
9 qualified as an expert. He was working for the government,
10 he's on the government's payroll. He'd never testified for a
11 defendant. He didn't have independence, and he basically
12 rubber stamped what it was that the government said.

13 But more, and this goes again to challenging the
14 investigation. Here's a man who came here and said that he was
15 a member of a group of certified fraud examiners. He had to
16 eat it the next day. I concede that I can't take the credit
17 for that, except for asking the question, but he had to eat it.

18 He actually was not certified. He actually had been
19 suspended two years earlier, and he was suspended because he
20 failed to do what? Take his continuing accountant or fraud
21 examiner credits. He wasn't up to date. There are times in
22 this case when I've seen that the government has extended
23 itself too far. That's one of them.

24 There was another time when Carol Paszkiewicz
25 pointed to the prosecutor. You decide, did she tell him to

1 jump up and object?

2 There are times when you have agents that have
3 gotten chippy in a way. When I say that, I mean in a hockey
4 way, that they got argumentative, they pushed back. Remember
5 the number of times I asked Mr. Sauer about gifts, and he kept
6 on coming back to cash gifts? And of course, it's important to
7 him to talk about cash gifts, but if there is gifting going on,
8 isn't that a sign?

9 When the government tells you that they tried to
10 eliminate every possibility of cash for Kwame Kilpatrick, is
11 that advocacy, is it honest, or is there a motive? And I
12 suggest that that exhibit that the government has about the
13 cash expenditures and the cash receipts of Kwame Kilpatrick
14 showing that he has spent more in cash than he did have income,
15 that is a flawed analysis.

16 Gary Leeman talked to you about science and that
17 accounting has a science to it. To the extent that they
18 ignored the income that Kwame Kilpatrick and his wife were
19 generating before 2002, there's a flaw. If he was earning, and
20 I suggest that the exhibits that you're going to see -- this is
21 KK -- DKKF-15 through 18, you're going to see his income tax
22 records, and you're going to see that between he and Carlita,
23 for the three years prior to the time when Special Agent Sauer
24 had done his analysis, they made \$375,000 in adjusted gross
25 income.

1 You're living on Leslie, very little expenses, and
2 that's not taken into account? Carlita's banking at
3 U.N.I.T.E., and the other joint account that they had for
4 \$46,000, that wasn't considered, yet he's trying to do a cash
5 analysis, and there were cash withdrawals. Is that scientific?
6 And when he says to you that he had no evidence of gifting, and
7 we have Congresswoman Kilpatrick giving him \$4,000 in a check
8 for a car. We have, we have Special Agent Sauer going out to
9 the Atheneum to check out on Marvel Cheeks' birthday party.

10 Which I'll say as an aside, by the way, there was a
11 civic function to that, and if you take a look -- listen to
12 what Ayanna Kilpatrick says, "We can make it a civic thing."
13 It wasn't full reimbursement, but the Civic Fund is being
14 criticized because Marvel Cheeks had a 90th birthday party, and
15 they tried to make it a community function.

16 But when the agents go out to investigate that,
17 because they're obviously listening in on Mr. Kilpatrick's
18 phone conversations. That's the same place that he had the
19 Splash of Red. The same person that threw the Cheeks party was
20 Sophie Plastiras. She came in and told you that there were
21 1,500 people, I think it was June 17th, for Mr. Kilpatrick's
22 36th birthday. And if they gave as much as William Tandy, you
23 do the math. I don't want to do it again because I don't want
24 to get in trouble. 1,500? 15,000? How much money is that?

25 And of course, you can't assume that everybody gives

1 \$100. You can't assume that everybody gives cash, but that's
2 evidence of gifting, which the government obviously missed, as
3 they did his 30th birthday, as they did his wedding, all of
4 which requested cash.

5 And you think that in this investigation, with all
6 of their resources, and they are substantial, that they haven't
7 talked to employees, people that were appointees of
8 Kwame Kilpatrick?

9 Sharon McPhail came in and told you of a gifting and
10 how it was that they did gifts. There were potentially 13
11 years -- I'm sorry, 13 different events, whether it be a
12 birthday or Christmas party, that Mr. Kilpatrick had where cash
13 gifts were raised. We know that it's not 15 because he got a
14 watch one year, very expensive Rolex, and then he got a trip on
15 another with his family.

16 But other than those two, there are 13 potential
17 gift-raising events that you heard testimony, not only from
18 Kizzi Montgomery but also from Sharon McPhail, former Assistant
19 U.S. Attorney, former city councilperson, former employee, who
20 is an appointee of Mr. Kilpatrick. And both Kizzi and Sharon
21 talked about the appointees at the base level giving 50 to
22 \$25 -- I'm sorry, 25 to \$50, the people that were directors
23 giving \$500.

24 There were a hundred of the original appointees,
25 there were well over 20 of the directors. I think there's 36.

1 You'll remember what the testimony was. And certainly there
2 were ten cabinet members at a thousand apiece. Now, multiply
3 that times two times a year, or to make it easy, 13.

4 The government's graph is not scientific. The
5 government's graph did not rule out nontaxable income. When
6 they purport to tell you that Kwame Kilpatrick owes taxes
7 because of the cash that he was depositing in his account, the
8 government completely ignored gifts, completely ignored gifts,
9 they completely ignored loans. You can't ignore that.

10 Sharon McPhail's testimony was unrefuted, and
11 Kizzi Montgomery, her testimony is the same, whether the
12 government asked questions or not. They didn't ask Sharon
13 McPhail one question. And they didn't bring any evidence in,
14 other than what it was that we had with Sharon McPhail and
15 Kizzi Montgomery.

16 How do you get around that, when you're trying to
17 hold the government to their heavy burden of proof beyond a
18 reasonable doubt? How do you get beyond that?

19 I took the position in the very beginning that I was
20 going to try and show you that the investigation in this case
21 was flawed, and this is probably one of the most pivotal of the
22 issues that we found.

23 **THE COURT:** Mr. Thomas, is this a good place for a
24 short break?

25 **MR. THOMAS:** I can, I will.

1 **THE COURT:** Take ten minutes.

2 (Jury out 11:15 a.m.)

3 (Recess taken 11:15 a.m. until 11:32 a.m.)

4 (Jury in 11:32 a.m.)

5 **THE COURT:** Be seated.

6 **MR. THOMAS:** Ladies and gentlemen, I'm sorry that
7 it's taken this long. It will be about 20 more minutes if you
8 can stand it. I'd like to do that.

9 I want to talk to you a little bit about the
10 Government's Exhibit KKF-31. All right. This is the exhibit
11 where the government had taken exception to Kilpatrick Civic
12 Fund money that went to Mr. Kilpatrick. If you take a look,
13 this is consistent with the other document that you'd seen
14 regarding these expenses, the one that had the graph, and you
15 can see that in 2003, '6 and '7, there's only four expenditures
16 that are really a potential problem.

17 And while I talked to you about La Costa and I
18 talked to you about Mr. Kilpatrick and his family going to
19 La Costa, the driving range and the SpyOps and the Center for
20 Yoga Health, the defensible one is SpyOps. That's for a piece
21 of equipment that went to the Detroit Police Department. It's
22 still in, it's still in use, and it is, it certainly is within
23 the keeping of what it is the purposes of the Civic Fund are.

24 We had talked before, and I went through a list of
25 checks with Special Agent Sauer, and those checks are 9/17/08

1 for \$5,180 to the Hilton Southlake Town Square; 10/16/08 at the
2 Great Wolf Lodge for \$1,228.64; 12/3/08 there are three checks,
3 and one is for 1,735, another one for 1,574. You'll be able to
4 see these. These are the ones that relate to hotels at or
5 about the time that Mr. Kilpatrick was incarcerated.

6 I went through those numbers with Special Agent
7 Sauer, and I had him add them up, and then I showed him
8 DKKF-12, which showed that thirteen oh-two-seven seventy-three
9 was paid back on April 11, 2009. What this shows is that
10 Mr. Kilpatrick became aware before the end of the tax year that
11 expenditures had been made that should be reimbursed, and he
12 did. One might say, oh, well, you know, the government was out
13 there and they were looking, or whatever. Does it matter? He
14 paid the money back.

15 And if it was paid back before the tax year and the
16 tax return was due, then there are different treatments that
17 I'm certain that a CPA could do that would account for this in
18 a fashion that would be in keeping with the Internal Revenue
19 Service Code.

20 As it relates to each of the other events, Impact
21 Strategies. We talked about Mr. Kilpatrick's image, protecting
22 his image, the work that was done. Obviously, if his image was
23 suffering, his ability to generate funds for the Civic Fund was
24 going to be diminished. That turned out to be true because, as
25 he resigned and as he was incarcerated, the Civic Fund money

1 was significantly reduced. There is a direct relationship then
2 between his image and the preserving of that image and a Civic
3 Fund purpose.

4 So I suggest that the Impact Strategies, Hilton --
5 I'm sorry, the SuperCamp for the kids, which was not a sports
6 camp, it was an educational process. I asked Special Agent
7 Sauer if there was an exception to the Kilpatrick name and
8 whether or not that could be properly reimbursed, and while I
9 accept that he's not an expert, I'll take him for his word, he
10 said, "No."

11 And so I'd ask you, as you're going through KCF-2
12 and DKCF-4, which are the two Articles of Incorporation that
13 set out the purposes, to make a determination as to whether or
14 not you think they were appropriate. I suggest that they are.

15 I want to talk to you for a minute about Mahlon
16 Clift because I think that Mahlon Clift was a guy who came in
17 with some very interesting testimony. Magic testimony. Mahlon
18 Clift magically came into Detroit and magically stayed at the
19 Atheneum where there is magically no record of him staying at
20 the Atheneum except in June, for an event where he said later
21 on in the year, not sure exactly when, that Bobby Ferguson
22 called him on the phone and asked him to come get \$90,000 and
23 take it to Chicago.

24 You remember his testimony? The \$90,000 was in 50s
25 and 100s, and we saw it stacked up here and it was pretty high,

1 and Mahlon Clift had testified that he took it to the airport,
2 although he doesn't have a plane ticket to show us, and that he
3 traveled to Chicago, that he hid it in his vacuum cleaner, and
4 then later took 50 and then 40, 50 down to Texas and then 40
5 brought to Detroit. And this was supposedly at the behest of
6 Bobby Ferguson who, by the way, had his own relationship with
7 Kwame Kilpatrick, and if he wanted to give him money, he could
8 have given it to him by just calling him on the phone and
9 saying, "Come over and get it," or making a text and saying,
10 "Come over and get it."

11 But we don't have a text, and we don't have a phone
12 conversation. And we have Mahlon Clift's testimony, which I
13 suggest is incredible.

14 The government did not show you the test, and that
15 was a test that was set up at Detroit Metro Airport. And the
16 test was with a machine that was similar to the machines that
17 they were using.

18 Special Agent Joe Jensen, nice looking guy -- where
19 is he? He's here somewhere. He was. He testified that it was
20 his decision as to how it was that he was going to put the
21 money on his body, even though you heard Mahlon Clift say that
22 he had cargo pants on and that he put them in his pockets.
23 Didn't describe the shirt, but the assumption is that cargo
24 pants have pockets that go a little bit lower, and it was his
25 testimony that he went through security at the Detroit

1 Metropolitan Airport.

2 Now, I'm going to take heat, I'm going to own up to
3 it. In my opening statement, I had indicated to you that there
4 are magnetic fibers in the money. Well, we have no testimony
5 about magnetic fibers. We had some testimony about the
6 magnetic properties of money, but not those fibers that you see
7 if you peel it, you know, on your hundred dollar bill like some
8 people do to determine whether it's counterfeit or not.

9 Here's the long and short of it. Mahlon Clift did
10 not go through any airport checkpoint. Why is it that I know
11 that? Why is it that you should know that? First of all, the
12 test that they showed had the money wrapped around his belt
13 area. Special Agent Jensen, pretty trim guy, but he had a
14 t-shirt, and instead of putting the money in the pockets of his
15 gym shorts and then in his cargo pants on top of it, he decides
16 that he's going to wrap it around his belly.

17 Now, I know what I saw. You decide. All right, I'm
18 a TSA officer, I see this guy, he's got a bulging belly. I'm
19 going to take him to a secondary checkpoint, all right. It
20 looked like he was strapped with a bomb, or that he was
21 strapped with money around his waist.

22 If I was an agent, I wouldn't know what it is, and I
23 certainly would check, despite what Mr. Lorincz says. You saw
24 the video. I had to show it to you because the government
25 didn't want to show it to you. I showed it to you. You tell

1 me what you saw.

2 But it's incredible for another reason. How many of
3 you have gone to the airport, how many of you have heard the
4 TSA guy barking out, "Take everything out of your pockets," all
5 right? Put your Mahlon Clift hat on. Are you going to walk
6 into that line knowing you got 90 grand in your pockets of
7 somebody else's money?

8 Ladies and gentlemen, that didn't occur. No
9 reasonable person, unless he's deaf, blind and dumb, is going
10 to get in that line, knowing full well that he has \$90,000 in
11 his pockets, and the first thing that anybody's going to say to
12 you at the airport, is going to say, "Clean out your pockets."
13 It doesn't make sense. And we, with our lives, 21-plus years
14 of experience, we have better sense than that, than to buy
15 that.

16 So there's two reasons, there's two reasons why this
17 thing with Mahlon Clift doesn't hold water. The other thing is
18 totally uncorroborated. He has an airplane ticket that
19 obviously he either comes to Detroit or goes back to Chicago.
20 He's got an airplane ticket from Chicago to Texas. He's got
21 obviously Texas back to Chicago, and then he comes back to
22 Detroit. No evidence of any airplane tickets, no stubs, no
23 tickets, no record of him.

24 Number two, he said that he stayed at the Atheneum,
25 and the only record of him at the Atheneum is in June 2008 and

1 this occurred much, much after that. Where is the
2 corroboration for this?

3 Now, I don't have to answer the question why, but
4 I'm going to ask it anyway. Why would Mahlon Clift do this if
5 it didn't happen? And I guess that's going to be for you to
6 decide. But it seems to me that when he was interviewed and
7 given an immunity agreement, I don't know if you remember the
8 testimony, he was, he was being questioned. The questioning
9 stopped. Something happened. He got his mom on the phone.
10 She, after she talks to him, he comes in and at that point he
11 comes up with this magical story. Magical, something that
12 doesn't, doesn't hold water.

13 Look it, you have a lot of reasons to doubt this
14 case. I've tried to show you reasons to doubt this case, all
15 right. We talked about the science that goes into an analysis
16 of whether or not a person has more cash available than he has
17 income. We've shown you significant evidence of gifting that
18 the government had ignored, talked about Mahlon Clift. We
19 talked about the credibility of the three witnesses who are the
20 most important witnesses of the government, I suggest.

21 We attacked the government in terms of their
22 investigation, and we've had reasons for you to think about
23 what it is that has happened in this trial. What is a
24 reasonable doubt? It's a fair doubt. It's a doubt that arises
25 out of the evidence or the lack of evidence. The judge is

1 going to tell you about that. It's the kind of doubt that will
2 cause you to hesitate in the most important of your own
3 affairs.

4 Now, I don't know -- do you know what that means? I
5 can give you an example. It's not my affairs, it's not my
6 client's -- I'm sorry, it's not your affairs. It's what would
7 cause you to hesitate in the most important of your own
8 affairs, okay. So you don't judge what reasonable doubt is in
9 a vacuum. It's personal, okay. You don't look at
10 Mr. Kilpatrick and say, "Okay, that's him, I'll figure it out.
11 I'll apply a standard that relates to him." It's not that way.
12 Reasonable doubt is personal, all right. It would be something
13 that would cause you to hesitate in the most important of your
14 affairs.

15 Now, the three pillars of this case, and maybe a
16 fourth one is Mahlon Clift, are Emma Bell, Derrick Miller,
17 Karl Kado and maybe Clift, all right?

18 I want you to imagine -- and this is an example of
19 what reasonable doubt is -- Saturday morning, you had your
20 coffee and toast. You're up. You hear a knock at the door,
21 all right. Your husband or wife has already left. You got a
22 Derrick Miller -- you take any one of those four -- at your
23 door saying, "There was an accident down the street. Your
24 family member was in an accident. Don't worry. Don't worry,
25 I'll watch your stuff, okay. The most important of your own

1 affairs. I'll watch your children." Maybe not fair, but "I'll
2 watch your stuff." All right?

3 Would you hesitate? Have you heard him? Would you
4 hesitate? Remember when he was sitting down at that, and he's
5 going through the papers and he finds something? Would you
6 hesitate in the most important of your affairs? Did you see
7 him pick up my piece of paper and put it in his pocket? You
8 remember that? Do you remember? Old habits die hard. Not a
9 trustworthy guy. What's in it for me, I'm out for myself,
10 Derrick Miller for Derrick Miller.

11 When you're considering a racketeering offense and a
12 pattern of racketeering activities and Derrick Miller is out
13 there doing his stuff on his own, he's a rogue out there on his
14 own, you have to look at that really, really closely. And when
15 you consider how this case has unfolded and how it is that we
16 sit here today and what information you have about those four
17 witnesses, I don't care which one it is, Karl Kado, demented,
18 making up something about taking money when it's snowing out in
19 August.

20 Mahlon Clift, no corroboration, gets into a line
21 with the TSA when you know they're telling them, "Empty your
22 pockets," with \$90,000? Says he took the risk, without no
23 air -- air ticket and no corroboration, no hotel ticket?

24 Emma Bell. Oh, my God.

25 In the most important of your own affairs, you have

1 reason to doubt, you have a lot of reason to doubt. This whole
2 argument for the last couple hours has been that.

3 I hope that in some way I've resonated with you and
4 that you have understood what it is that I'm saying. I'm
5 certain that you really have paid really great attention, and I
6 appreciate all that.

7 When this case is over, you're going to go back in
8 the back room and you're going to deliberate. Government is
9 going to ask you for a verdict. I'm going to ask you for a
10 verdict. I'm going to ask you for not guilty on all counts.

11 Let Mr. Kilpatrick go home with his wife and kids.
12 Thank you.

13 (11:51 a.m.)

14 **THE COURT:** Thank you, Mr. Thomas.

15 All right. Ladies and gentlemen, we will break for
16 lunch. We will resume at 1:15, and see you then.

17 (Jury out 11:51 a.m.)

18 (Lunch recess taken 11:51 until 1:20 p.m.)

19 **THE COURT:** We have one juror who is really not
20 feeling well at all. She said she's going to do her best to
21 hang in, and if she needs a break she'll let us know.

22 **MR. SHEA:** Which one?

23 **THE COURT:** The juror who sits in seat number eight
24 here, the African American woman, second to the end seat. So
25 just to let you know, we have three or four of them who are

1 kind of under the weather.

2 **MR. SHEA:** Stay away from that Crock-Pot.

3 **THE COURT:** So they all want to try to finish up,
4 give you your time this afternoon.

5 **MR. SHEA:** Okay. I'll try not to belabor.

6 **THE COURT:** Okay.

7 (Jury in 1:21 p.m.)

8 **THE COURT:** Be seated. I know that several of you
9 are not feeling good, and if you need a break, just let us
10 know, and if we do make it through Mr. Shea's argument this
11 afternoon, I encourage everybody to sleep in tomorrow and rest
12 up so we can conclude on Thursday. So that should help, right?

13 Mr. Shea.

14 (1:22 p.m.)

15 **MR. SHEA:** Thank you, Your Honor.

16 Afternoon, ladies and gentlemen. In my opening
17 statement, I said to you that the case against
18 Bernard Kilpatrick was about a government that sees only what
19 it wants to see and that resolves all contradictions of him in
20 favor of a poisoned view of him and that, not surprisingly,
21 therefore, finds corruption behind what seems to be his every
22 statement and act and ignores the evidence of legitimacy in his
23 personal relationships, in his business relationships, and
24 wants you to ignore those as well.

25 Before discussing what I believe to be the evidence

1 in terms of what it has not shown in connection with
2 Bernard Kilpatrick, I want to go back to something else I
3 discussed in opening statement about what I told you is not
4 illegal.

5 It's not illegal for a person to provide consulting
6 services to a client regarding government services, government
7 business and things like that, even if the person providing the
8 consulting services is the mayor's father. And it's not
9 illegal for a consultant to have discussions with the mayor or
10 the mayor's administration regarding his clients and his
11 clients' business interests, even if the mayor is the
12 consultant's son, the consultant is the mayor's father. And
13 it's not illegal to have discussions, general discussions even,
14 with him and with other associates regarding business
15 opportunities, even if the consultant is the mayor's father.
16 These things aren't illegal, anymore than they would be illegal
17 if the business consultant was not the mayor's father.

18 So, and you have heard evidence of all of these
19 things as it relates to other consultants who were not the
20 mayor's father. The rules don't apply any differently to him
21 just because he's the mayor's father.

22 Now, I want to -- you know more about this case than
23 probably I do at this point, but I want to go over some basic
24 old ground, starting with some personal information regarding
25 Bernard Kilpatrick. He's 71 years old now. Back at this time

1 in 2001, he was 60 years old. He's the father of three
2 children, Kwame Kilpatrick is one of them.

3 It's a close family. You heard various witnesses
4 testify to the fact that it was a close family, and therefore,
5 it was not uncommon to see Bernard Kilpatrick and
6 Kwame Kilpatrick and Ayanna Kilpatrick and Diarra Kilpatrick
7 and other Kilpatricks at various places at various times, as
8 families are. It would not be uncommon to see
9 Bernard Kilpatrick on the 11th floor of the City-County
10 Building to say hi to his son, see how things are going, as
11 parents do with their kids.

12 You also learned that it's a political family.
13 Mr. Kilpatrick, Bernard Kilpatrick, was a county commissioner
14 for a number of years in the '80s. His former wife, Carolyn
15 Cheeks Kilpatrick, the mayor's mother, was a state rep in
16 Lansing, was a congresswoman for a number of years in
17 Washington, DC. Kwame Kilpatrick was a state rep in Lansing
18 before he became mayor of the City of Detroit.

19 When Bernard Kilpatrick was not an elected county
20 commissioner, he was working in government. You heard from
21 numerous witnesses that he worked in the Ed McNamara
22 administration, ending up as Ed McNamara's chief of staff when
23 his son was elected mayor in 2001. So Bernard Kilpatrick and
24 his family have a long history when it comes to local politics
25 and local government service, and Bernard's, in particular, was

1 of longstanding.

2 Now, when Kwame Kilpatrick was elected,
3 Bernard Kilpatrick needed to leave county government. You
4 heard that -- well, it's called the City-County Building for a
5 reason. You got a city side, you got a county side, they're in
6 the same building. You got the mayor of the City of Detroit in
7 one side of it, you got the chief of staff to the elected
8 county executive on the other side of it, and the thought was
9 it was too close to have Bernard Kilpatrick in -- that high up
10 in county government when his son was the mayor.

11 So Bernard Kilpatrick decided to retire from the
12 county and open a consulting business, and we've learned that
13 that's not unusual for people who retire from government jobs.
14 We heard about Curtis Hertel, who was a former state
15 representative in Lansing who retired and became a consultant.
16 We heard about Conrad Mallett, a former Michigan Supreme Court
17 justice who retired and did some consulting work. We heard
18 about a woman named Edna Bell, who was an elected county
19 commissioner -- not Emma Bell, Edna Bell -- who is a former
20 county commissioner, like Bernard Kilpatrick was, who retired
21 and was a consultant. She worked with Bernard Parker III, I
22 think when Bernard Parker III was doing work for Insituform,
23 you saw a couple of emails that mentioned her.

24 What do consultants do? They do various things. I
25 mean, to boil it down into a sentence, they're the interface

1 between a client who wants something from government and the
2 government that is either going to give it to them or not.
3 Sometimes what they want is simple information. How do I do
4 something? Sometimes they want to know about government
5 processes and how it might implicate their business, business
6 expectations, business anticipation, business operations.

7 Sometimes they need a consultant to advocate
8 positions for them. Sometimes they need a consultant to make a
9 proper complaint for them. There are various reasons we heard
10 why somebody who wanted to interact with the City of Detroit or
11 Wayne County or the State of Michigan or the federal
12 government, for that matter, might want a consultant to assist
13 them in connection with that.

14 How do they do it? Why can't all -- any of us do
15 it? Hang out a shingle, call ourselves a consultant and be
16 that effectively? It's because in order to do it effectively,
17 you need two things. You need personal relationships with
18 people who are in the government that you're going to be
19 communicating with, because they've got to take your call, or
20 they've got to agree to take a meeting with you. They have to
21 be willing to talk to you, so you have to have personal
22 relationships, and you have to have some specialized knowledge
23 of how things work so you know who to call when it comes to
24 those personal relationships, and we don't all have that. Few
25 of us have that.

1 This is a normal, common part of government life.
2 We hear talk of lobbyists. Lobbyists are just a specialized
3 kind of consultant. They happen to work in legislatures,
4 lobbyists in congress, a lobbyist in the state house or the
5 state senate in Lansing. And these people provide value to
6 their clients if, in fact, they can effectuate good
7 communication with the particular governmental entity that the
8 client needs communicating with. And the more access in terms
9 of personal relationships a consultant has, and the more
10 knowledge in terms of how governments work that a consultant
11 has, the more valuable that consultant is to his or her
12 clients.

13 Bernard Kilpatrick had what it took to be a
14 successful consultant. Part of it's by accident, he happened
15 to have the last name Kilpatrick and was related by blood to
16 the mayor. There's nothing wrong with him utilizing that
17 accidental benefit. And part of it was by the fact that he
18 lived his life in government for a long period of time. And
19 part of it had nothing to do with the City of Detroit at all,
20 because he had access to people in county government as well
21 based on working relationships he had forged over the years.
22 He had access in Lansing which we heard about based on the fact
23 that he was active in Democratic party politics in Detroit over
24 the years, and he probably had access, though we didn't get
25 into it much, in Washington as well through his former wife.

1 So Bernard Kilpatrick brought a package of
2 experience and connections to his job that made him valuable to
3 people. We heard a little bit about how consultants get paid,
4 and there's various methods in which they might get paid. Many
5 get paid a flat fee by the month, and you saw evidence that
6 many of Bernard Kilpatrick's clients paid him that way. Some
7 get paid by the quarter, sometimes consultants will get paid a
8 percentage of what they're working on if there's a sort of,
9 something you can quantify in monetary terms at the end of a
10 project that you might be able to apply a percentage to.
11 Sometimes people would work for a regular, whether it's monthly
12 or quarterly, payment during a project, and if it happened to
13 be successful at the end, get a piece of that as a success fee
14 at the end. You heard about that as well.

15 Bernard Parker III, when he left Ferguson
16 Enterprises and went out on his own, proposed, and it's in
17 evidence, proposed a contract to Bobby Ferguson to act as his
18 consultant, which talked about him being retained on a monthly
19 fee basis plus a success fee based on how certain projects
20 went. So that's just an example of that.

21 Because Bernard Kilpatrick had a package of talents
22 and experiences and connections that he could bring to bear, he
23 did attract clients, and if you have a chance, and you will
24 have a chance, you'll have a chance, as much chance as you want
25 in the jury room, take a look at BKF-6 and BKF-17.

1 BKF6 is a table of deposits into the -- of checks
2 into the Maestro account over the years. I think it's 2002
3 through 2008, and you have a left-hand column which says who
4 the source of the deposits are. They're not all clients.
5 You'll see Morgan Stanley checks in there, and you might see
6 something saying "unknown" or stuff like that, but you've heard
7 the names of many of them and you can assume that they're
8 clients.

9 BKF-17 is a series of Maestro bank account deposit
10 tables that show all the checks that went into his account,
11 again, with source information on them, and again, you'll be
12 able to identify and see who was paying him regularly and how
13 many people and how many clients he had and stuff like that.

14 So not all of his clients are included on those
15 charts. I mean, if a client did pay him in cash, and we're
16 going to talk about this, it's not necessarily on there, or if
17 it is, it's not sourced, but it gives you a pretty good idea
18 about what he did.

19 Yes, ma'am.

20 (Juror left the room.)

21 **THE COURT:** Sorry.

22 **A JUROR:** Judge, I wonder if it's probably best for
23 us to end it now because I'm concerned that I'm not able to
24 hear everything the attorney is saying, and I want to give him
25 a fair opportunity to argue to us so ...

1 **THE COURT:** All right. Maybe we should do that
2 then. I don't want to foreclose full attention for your
3 argument. I think there is, as I said, quite a few under the
4 weather. I apologize to everyone, but I think we're best off
5 doing that.

6 **MR. SHEA:** Okay.

7 **THE COURT:** So we'll pick up at 9:00 Thursday
8 morning. All right.

9 (Jury out 1:35 p.m.)

10 **THE COURT:** Counsel.

11 (The following sidebar conference was held:)

12 **THE COURT:** So how long are you going to go
13 Thursday?

14 **MR. SHEA:** How long was I on?

15 **THE COURT:** Ten, 15 minutes.

16 **MR. SHEA:** Hour and a quarter, hour and a half.

17 **THE COURT:** And then let's do yours.

18 **MR. EVELYN:** I agree, I totally agree.

19 **THE COURT:** Okay. So it will take us until 1:00 or
20 1:15 probably, then we'll take -- do yours without a break,
21 take a break, we'll take one break in the middle of yours, take
22 lunch break and do rebuttal, okay?

23 **MR. SHEA:** I've got a few audio clips I'm going to
24 play, but they're snippets, not to put too pejorative a word on
25 that, but -- and I don't think it's going to appreciably

lengthen anything.

THE COURT: All right. Sorry.

(End of discussion at sidebar.)

(Proceedings adjourned at 1:39 a.m.)

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C E R T I F I C A T I O N

I, Suzanne Jacques, Official Court Reporter for the United States District Court, Eastern District of Michigan, Southern Division, hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date set forth.

Date: February 12, 2013

s:/Suzanne Jacques
Suzanne Jacques

Official Court Reporter